IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9029 OF 2005.

Shri Ananda W.Ghare & anr..... Petitioners.

V/s.

Shri Yashwant K. Ghare ... Respondent.

Shri G.S. Godbbole for the petitioner.

Shri V.G. Mujuimdar for the respondent.

CORAM: V.C.DAGA, J.

DATED: 29.1.2007.

P.C.:

. Rule returnable forthwith. Shri Mujumdar waives service on behalf of the respondent. Heard finally by consent of the parties.

2. This petition is directed against the order dated 19.1.2005 passed below Ex.31 in Reg. Civil Suit No. 28 of 2004 by the Civil Judge, J.D., Vadgaon,Maval, whereby application for amendment of the plaint came to be rejected, holding that it will change the nature of the suit.

3. Having seen the text of the amendment, it appears that the petitioner wants to raise additional legal grounds.

4. Shri Godbole, learned counsel for the petitioner, relying on the decision of the Apex Court in the case of **Pankaja and anr. vs. Yellappa (Dead) by Lrs. and ors. (2004)6 SCC 415,** contends that that the amendment should have been allowed to avoid multiplicity of the proceedings.

5. Per contra, Shri Mujumdar for the respondent submitted that amendment sought to be made is barred by limitation and, therefore, it should not be allowed. He placed reliance on the judgment of the Apex Court in the case of **T.L. Muddukrishna vs. Lalita Ramchandra Rao AIR 1997 SC 772.**

6. Having heard rival parties and looking to the consensus between the parties, the impugned order dated 19.1.2005 set aside; however, accepting suggestion given by Shri Mujumdar, learned Counsel for the respondent that the question relating to limitation and all other factual and legal pleas on merits be left open for being raised and decided by the trial Court during the course of trial in accordance with law.

7. The impugned order is, thus, set aside.

Petitioners are permitted to raise additional pleas. Amendment to be carried out within 15 days from the date of receipt of this order by the trial Court.

8. Respondent shall be at liberty to effect consequential amendment to the written statement within 15 days thereafter.

9. The trial Court shall decide the matter on its own merits, permitting rival parties to raise all legal and factual contentions during the trial.

10. The petition accordingly stands allowed. Rule is made absolute in terms of this order subject to payment of cost quantified in the sum of Rs. 2500/- to be paid by the petitioners to the respondent within 15 days from today by depositing it in the trial Court.

(V.C.DAGA, J.)